

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 02-2792

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United States of America,

Appellee,

v.

Rigoberto Pastor Wilson-Garcia,

Appellant.

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\* Appeal from the United States  
\* District Court for the  
\* Southern District of Iowa.  
\* [UNPUBLISHED]  
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Submitted: April 14, 2003

Filed: April 22, 2003

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Before BOWMAN, WOLLMAN, and BYE, Circuit Judges.

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PER CURIAM.

In this direct criminal appeal, Rigoberto Pastor Wilson-Garcia challenges the sentence the district court<sup>1</sup> imposed after he pleaded guilty to illegally re-entering the United States after deportation, following convictions for one or more crimes, including an aggravated felony, in violation of 8 U.S.C. § 1326(a) and (b)(2). The district court sentenced him to 96 months of imprisonment and 3 years of supervised release. On appeal, Wilson-Garcia's counsel has moved to withdraw under Anders

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<sup>1</sup>The Honorable James E. Gritzner, United States District Judge for the Southern District of Iowa.

v. California, 386 U.S. 738 (1967), raising one issue: the district court erred in denying Wilson-Garcia a downward departure based upon his cultural assimilation into the United States.

We conclude that the district court made a discretionary decision not to depart, which is unreviewable. See United States v. Edwards, 225 F.3d 991, 992-93 (8th Cir. 2000), cert. denied, 531 U.S. 1100 (2001).

Following careful review of the record, we find no other nonfrivolous issues. See Penson v. Ohio, 488 U.S. 75, 80 (1988). Accordingly, the judgment is affirmed. We also grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.